

SENATE BILL

No. 1216

Introduced by Senator Lowenthal

February 22, 2012

An act to amend ~~Section 922.6~~ Sections 922.2, 922.4, 922.5, 922.8, and 12121 of, and to add ~~Section~~ Sections 717.5, 922.31, 922.42, 922.43, and 922.85 to, to add and repeal Section 922.41 of, and to repeal and add Section 922.6 of, the Insurance Code, relating to reinsurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1216, as amended, Lowenthal. Reinsurance: professional reinsurers.

Existing

(1) *Existing* law prohibits the transaction of any class of insurance in this state without first being admitted for that class of insurance, and admission is secured by procuring a certificate of authority from the Insurance Commissioner. Before granting a certificate of authority to any applicant, the commissioner is required to consider the qualifications of the applicant, including, but not limited to, capital and surplus and lawfulness and quality of investments.

This bill would authorize the commissioner to ~~grant a certificate of authority to transact reinsurance, to designate an insurer as a professional reinsurer when~~ an insurer admitted and domiciled in this state, or an insurer applying to become admitted and domiciled in this state, ~~by determining that the insurer is~~ *is determined by the commissioner to be qualified to be designated as a professional reinsurer, as prescribed specified*, which includes, but is not limited to, the commissioner determining that the insurer is principally engaged in the business of reinsurance, that the insurer does not conduct significant

amounts of direct insurance as a percentage of its net premiums, and is not engaged, on an ongoing basis, in the business of soliciting direct insurance.

~~Existing~~

(2) *Existing* law requires insurers doing business in this state to annually make and file with the commissioner financial statements.

~~Credit~~

Existing law requires that credit for reinsurance as an asset or deduction from liability be allowed a domestic ceding insurer only if the reinsurance contract includes certain provisions, including, in the event of insolvency and the appointment of a conservator, liquidator, or statutory successor of the ceding company, that the reinsurance will be payable, as specified, without diminution because of the insolvency.

This bill would revise that requirement to additionally apply in the event of a change in status of the ceding company, as specified, including when the commissioner finds that the conditions for the appointment of a conservator, liquidator, or statutory successor has occurred with respect to the ceding company.

The bill would also require a ceding insurer to take steps to manage its reinsurance recoverables proportionate to its own book of business and to diversify its reinsurance program. The bill would also require a domestic ceding insurer to notify the commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceed 50% of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that the reinsurances recoverables are likely to exceed that limit, as specified. The bill would also require a domestic ceding insurer to notify the commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded is likely to exceed this limit, as specified.

(3) *Existing law also allows credit for reinsurance when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state, except as specified. Existing law describes an accredited reinsurer for purposes of this provision as one that, among other criteria, maintains a surplus as regards to policyholders in an amount that is either not less than \$20,000,000, and whose accreditation has not been denied by the commissioner within the last 90 days, or*

maintains a surplus that is less than \$20,000,000 and whose accreditation has been approved by the commissioner.

This bill would instead require that the reinsurer demonstrate to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers, and would delete the provision authorizing a reinsurer whose accreditation has been approved to maintain a surplus of less than \$20,000,000. The bill would instead provide that an assuming insurer who maintains a surplus of not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within the last 90 days shall be deemed to meet that requirement and would require that an assuming insurer who is not deemed to meet this requirement obtain the affirmative approval of the commissioner. The bill would require that the approval of the commissioner be based upon a finding that the assuming insurer has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(4) Existing law also provides that credit is allowed when reinsurance is ceded to an assuming insurer that maintains a trust fund, as specified.

This bill would authorize the commissioner to authorize a reduction in the required trustee surplus after an assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, as specified.

The bill would also enact, only until January 1, 2016, provisions governing the certification and rating of assuming insurers by the commissioner and specify additional circumstances under which credit shall be allowed to a domestic insurer when the reinsurance is ceded to an assuming insurer that has been certified. The bill would require, among other things, that the assuming insurer be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction and would require the commissioner to create and publish a list of qualified jurisdictions, as specified. The bill would also require the assuming insurer to maintain minimum capital and surplus, or its equivalent, in an amount determined by the commissioner, and to maintain financial strength ratings from 2 or more ratings agencies, as specified. The bill would impose various filing requirements on certified reinsurers, including notification within 10 days of any regulatory actions taken against the certified reinsurer and annual audited financial statements. The bill would also require the commissioner to assign a rating to each certified reinsurer based on specified criteria, such as the certified

insurer's financial strength rating from an acceptable rating agency and the certified insurer's reputation for prompt payment of claims. The bill would also authorize the commissioner to suspend or revoke an accredited or certified reinsurer's accreditation or certification after notice and opportunity for hearing, as specified.

The bill would make other related changes.

(5) Existing law provides that credit for reinsurance as an asset or a deduction from liability is allowed a foreign ceding insurer, with exceptions, to the extent the credit has been allowed by the ceding insurer's state of domicile if the state of domicile is accredited by the National Association of Insurance Commissioners (NAIC), or the credit or deduction from liability would be allowed if the foreign ceding insurer were domiciled in this state. Credit for reinsurance as an asset or a deduction from liability may be disallowed if the commissioner finds that the financial condition of the reinsurer, or the collateral or other security provided by the reinsurer, does not satisfy the credit for reinsurance requirements applicable to a ceding insurer domiciled in this state.

This bill would instead require that credit for reinsurance not be denied a foreign ceding insurer to the extent that credit is recognized by the ceding insurer's domestic state regulator, provided that the domestic state is accredited by the NAIC, or the domestic state regulator has financial solvency requirements similar to the requirements necessary for NAIC accreditation.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 717.5 is added to the Insurance Code, to
2 read:
3 717.5. (a) For purposes of Sections 700 and 717, the
4 commissioner may determine that an insurer admitted and
5 domiciled in this state, or an insurer applying to become admitted
6 and domiciled in this state, including an applicant pursuant to
7 subdivision (a) of Section 709.5, is qualified to be designated as
8 a professional reinsurer, if the commissioner determines that the
9 insurer is all of the following:
10 (1) Principally engaged in the business of reinsurance.

1 (2) Does not conduct significant amounts of direct insurance as
2 percentage of its net premiums.

3 (3) Is not engaged, on an ongoing basis, in the business of
4 soliciting direct insurance.

5 (b) The commissioner may consider any information relevant
6 to this determination. An insurer that holds, or is applying for
7 qualification as, a professional reinsurer, shall provide the
8 commissioner with information or documentation regarding the
9 determinations under this section, upon request. The commissioner
10 may prescribe terms and conditions applicable to the certificate of
11 authority, as appropriate under this section.

12 (c) A domestic, professional reinsurer shall continue to be
13 qualified as long as it continues to meet the requirements set forth
14 in this section.

15 (d) The commissioner may, after notice and an opportunity to
16 be heard, revoke a reinsurer's qualification, if the reinsurer no
17 longer qualifies under this section.

18 (e) A domestic insurer that is qualified as a professional reinsurer
19 may include that designation in its name, solicitations, and
20 advertisements.

21 (f) An insurer seeking ~~qualifications~~ *qualification* under this
22 section shall pay a filing fee of two thousand five hundred dollars
23 (\$2,500), in advance, to the commissioner.

24 (g) The commissioner may adopt regulations in accordance with
25 the procedure provided in Chapter 3.5 (commencing with Section
26 11340) of Part 1 of Division 3 of Title 2 of the Government Code
27 or otherwise prescribe requirements consistent with this section.

28 (h) The commissioner may post prescribed requirements,
29 consistent with this section, on the department's Internet Web site.

30 *SEC. 2. Section 922.2 of the Insurance Code is amended to*
31 *read:*

32 922.2. (a) Credit for reinsurance shall be allowed a domestic
33 ceding insurer as either an asset or a deduction from liability in
34 accordance with Sections 922.4 and 922.5 only if the reinsurance
35 contract contains provisions that provide, in substance, as follows:

36 (1) The reinsurer shall indemnify the ceding insurer for the risk
37 it has assumed according to the terms and conditions contained in
38 the reinsurance contract.

39 (2) In the event of insolvency, *or a change in the status of the*
40 *ceding company as defined in this section*, and the appointment of

1 a conservator, liquidator, or statutory successor of the ceding
2 company, the reinsurance shall be payable to the conservator,
3 liquidator, or statutory successor on the basis of claims allowed
4 against the insolvent company by any court of competent
5 jurisdiction or by any conservator, liquidator, or statutory successor
6 of the company having authority to allow ~~such~~ *those* claims,
7 without diminution because of that insolvency *or change in status*,
8 or because the conservator, liquidator, or statutory successor has
9 failed to pay all or a portion of any claims. Payments by the
10 reinsurer as set forth in this subdivision shall be made directly to
11 the ceding insurer or to its conservator, liquidator, or statutory
12 successor, except where the contract of insurance or reinsurance
13 specifically provides another payee of such reinsurance in the event
14 of the insolvency *or change in status* of the ceding insurer.

15 The reinsurance contract may provide that the conservator,
16 liquidator, or statutory successor of a ceding insurer shall give
17 written notice of the pendency of a claim against the ceding insurer
18 indicating the policy or bond reinsured, within a reasonable time
19 after such claim is filed and the reinsurer may interpose, at its own
20 expense, in the proceeding ~~where such~~ *in which the* claim is to be
21 adjudicated, any defense or defenses which it may deem available
22 to the ceding insurer or its conservator, liquidator, or statutory
23 successor. The expense thus incurred by the reinsurer shall be
24 payable subject to court approval out of the estate of the insolvent
25 ceding insurer as part of the expense of conservation or liquidation
26 to the extent of a proportionate share of the benefit which may
27 accrue to the ceding insurer in conservation or liquidation, solely
28 as a result of the defense undertaken by the reinsurer.

29 (b) Payment pursuant to a reinsurance contract shall be made
30 within a reasonable time with reasonable provision for verification
31 in accordance with the terms of the reinsurance agreement.
32 However, in no event shall the payments be beyond the period
33 required by the National Association of Insurance Commissioners
34 (NAIC) Accounting Practices and Procedures Manual.

35 (c) The original insured or policyholder shall not have any rights
36 against the reinsurer which are not specifically set forth in the
37 contract of reinsurance, or in a specific agreement between the
38 reinsurer and the original insured or policyholder.

39 (d) *For purposes of this section, the phrase “change in the status*
40 *of the ceding company” means a finding by the commissioner that*

1 conditions set forth in subdivision (d) or (i) of Section 1011, a
2 Regulatory Action Level Event as defined in Section 739.4, or any
3 other event which permits the appointment of a conservator,
4 liquidator, or statutory successor has occurred with respect to the
5 ceding company.

6 SEC. 3. Section 922.31 is added to the Insurance Code, to
7 read:

8 922.31. (a) A ceding insurer shall take steps to manage its
9 reinsurance recoverables proportionate to its own book of business.
10 A domestic ceding insurer shall notify the commissioner within 30
11 days after reinsurance recoverables from any single assuming
12 insurer, or group of affiliated assuming insurers, exceeds 50
13 percent of the domestic ceding insurer's last reported surplus to
14 policyholders, or after it is determined that reinsurance
15 recoverables from any single assuming insurer, or group of
16 affiliated assuming insurers, is likely to exceed this limit. The
17 notification shall demonstrate that the exposure is safely managed
18 by the domestic ceding insurer.

19 (b) A ceding insurer shall take steps to diversify its reinsurance
20 program. A domestic ceding insurer shall notify the commissioner
21 within 30 days after ceding to any single assuming insurer, or
22 group of affiliated assuming insurers, more than 20 percent of the
23 ceding insurer's gross written premium in the prior calendar year,
24 or after it has determined that the reinsurance ceded to any single
25 assuming insurer, or group of affiliated assuming insurers, is likely
26 to exceed this limit. The notification shall demonstrate that the
27 exposure is safely managed by the domestic ceding insurer.

28 SEC. 4. Section 922.4 of the Insurance Code is amended to
29 read:

30 922.4. Credit for reinsurance shall be allowed a domestic ceding
31 insurer as either an asset or a deduction from liability on account
32 of reinsurance ceded only when the reinsurer meets the
33 requirements of subdivision (a), (b), (c), ~~or~~ (d), or (e). Credit shall
34 be allowed under subdivision (a) ~~or~~, (b), or (c) only for cessions
35 of those kinds or classes of business that the assuming insurer is
36 licensed or otherwise permitted to write or assume in its state of
37 domicile or, in the case of a United States branch of an alien
38 assuming insurer, in the state through which it is entered and
39 licensed to transact insurance or reinsurance. ~~If meeting the~~

1 ~~requirements of subdivision (c), the requirements of subdivision~~
2 ~~(c) shall also be met.~~

3 (a) Credit shall be allowed when the reinsurance is ceded to an
4 assuming insurer that is licensed to transact insurance or
5 reinsurance in this state unless the assuming insurer is the subject
6 of a regulatory order or regulatory oversight by any state in which
7 it is licensed based upon a commissioner's determination that the
8 assuming insurer is in a hazardous financial condition.

9 (b) (1) Credit shall be allowed when the reinsurance is ceded
10 to an assuming insurer that is accredited as a reinsurer in this state
11 unless the assuming insurer is the subject of a regulatory order or
12 regulatory oversight by any state in which it is licensed based upon
13 a commissioner's determination that the assuming insurer is in a
14 hazardous financial condition. An accredited reinsurer is one that
15 does all of the following:

16 (A) Files with the commissioner evidence of its submission to
17 this state's jurisdiction.

18 (B) Submits to this state's authority to examine its books and
19 records.

20 (C) Designates the commissioner or a designated attorney in
21 this state as its true and lawful attorney upon whom may be served
22 any lawful process in any action, suit, or proceeding instituted by
23 or on behalf of the ceding insurer.

24 (D) Is licensed to transact insurance or reinsurance in at least
25 one state, or in the case of a United States branch of an alien
26 assuming insurer, is entered through and licensed to transact
27 insurance or reinsurance in at least one state.

28 (E) Files annually with the commissioner a copy of its annual
29 statement filed with the insurance department of its state of
30 domicile and a copy of its most recent audited financial statement
31 and other financial information requested by the commissioner.

32 (F) Submits a statement, signed and verified by an officer of
33 the assuming insurer to be true and correct, that discloses whether
34 the assuming insurer or any affiliated person who owns or has a
35 controlling interest in the assuming insurer is currently known to
36 be the subject of any of the following:

37 (i) Any order or proceeding regarding conservation, liquidation,
38 or receivership.

1 (ii) Any order or proceeding regarding the revocation or
2 suspension of a license or accreditation to transact insurance or
3 reinsurance in any jurisdiction.

4 (iii) Any order or proceeding brought by an insurance regulator
5 in any jurisdiction seeking to restrict or stop the assuming insurer
6 from transacting insurance or reinsurance based upon a hazardous
7 financial condition.

8 The assuming insurer shall provide the commissioner with copies
9 of any orders or other documents initiating proceedings subject to
10 disclosure under this paragraph. The statement shall affirm that
11 no actions, proceedings, or orders subject to this subparagraph are
12 outstanding against the assuming insurer or any affiliated person
13 who owns or has a controlling interest in the assuming insurer,
14 except as disclosed in the statement.

15 (G) ~~Maintains~~ *Demonstrates to the satisfaction of the*
16 *commissioner that it has adequate financial capacity to meet its*
17 *reinsurance obligations and is otherwise qualified to assume*
18 *reinsurance from domestic insurers. An assuming insurer is deemed*
19 *to meet this requirement if it maintains a surplus as regards*
20 *policyholders in an amount that is not less than twenty million*
21 *dollars (\$20,000,000) and whose accreditation has not been denied*
22 *by the commissioner within 90 days of its submission or maintains*
23 *a surplus as regards policyholders in an amount less than twenty*
24 *million dollars (\$20,000,000) and whose accreditation has been*
25 *approved by the commissioner. An assuming insurer who is not*
26 *deemed to meet this requirement shall obtain the affirmative*
27 *approval of the commissioner. The approval of the commissioner*
28 *shall be based upon a finding that the assuming insurer has*
29 *adequate financial capacity to meet its reinsurance obligations*
30 *and is otherwise qualified to assume reinsurance from domestic*
31 *insurers.*

32 (2) The commissioner may deny or revoke an assuming insurer's
33 accreditation if the assuming insurer does not meet all of the
34 standards required of an accredited reinsurer, or if its accreditation
35 would be hazardous to the policyholders of this state. In
36 determining whether to deny or revoke accreditation, the
37 commissioner may consider the qualifications of the assuming
38 insurer with respect to all the following subjects:

39 (A) Its financial stability.

40 (B) The lawfulness and quality of its investments.

1 (C) The competency, character, and integrity of its management.

2 (D) The competency, character, and integrity of persons who
3 own or have a controlling interest in the assuming insurer.

4 (E) Whether claims under its contracts are promptly and fairly
5 adjusted and are promptly and fully paid in accordance with the
6 law and the terms of the contracts.

7 (3) Credit shall not be allowed a domestic ceding insurer if the
8 assuming insurer's accreditation has been revoked by the
9 commissioner after notice and hearing.

10 ~~(4) The actual costs and expenses incurred by the department~~
11 ~~to review a reinsurer's request for accreditation and subsequent~~
12 ~~reviews shall be charged to and collected from the requesting~~
13 ~~reinsurer. If the reinsurer fails to pay the actual costs and expenses~~
14 ~~promptly when due, the commissioner may refuse to accredit the~~
15 ~~reinsurer or may revoke the reinsurer's accreditation.~~

16 (c) *Credit shall be allowed when the reinsurance is ceded to an*
17 *assuming insurer that has been certified by the commissioner*
18 *pursuant to Section 922.41.*

19 (e)

20 (d) (1) Credit shall be allowed when the reinsurance is ceded
21 to an assuming insurer that maintains a trust fund in a qualified
22 United States financial institution as defined in subdivision (b) of
23 Section 922.7 for the payment of the valid claims of its United
24 States ceding insurers, their assigns, and successors in interest. To
25 enable the commissioner to determine the sufficiency of the trust
26 fund the assuming insurer shall report annually to the commissioner
27 information substantially the same as that required to be reported
28 on the NAIC Annual Statement form by licensed insurers or any
29 other form required by the NAIC.

30 (2) Credit for reinsurance shall not be granted under this
31 subdivision unless the form of the trust and any amendments to
32 the trust have been approved by either:

33 (A) The commissioner of the state where the trust is domiciled.

34 (B) The commissioner of another state who, pursuant to the
35 terms of the trust instrument, has accepted principal regulatory
36 oversight of the trust.

37 The trust and any trust amendments shall also be filed with the
38 commissioner of every state in which the ceding insurer
39 beneficiaries of the trust are domiciled. Notwithstanding the
40 foregoing, nothing in this paragraph shall prevent the commissioner

1 from disapproving the form of the trust if it is not in compliance
2 with this state's laws and regulations.

3 (3) Credit for reinsurance shall not be granted under this
4 subdivision unless the following requirements are met:

5 (A) The trust instrument shall provide that contested claims
6 shall be valid, enforceable, and payable out of funds in trust to the
7 extent remaining unsatisfied 30 days after entry of the final order
8 of any court of competent jurisdiction in the United States.

9 (B) The trust shall vest legal title to its assets in the trustees of
10 the trust for the benefit of the grantor's United States ceding
11 insurers, their assigns, and successors in interest.

12 (C) The trust and the assuming insurer shall be subject to
13 examination as determined by the commissioner.

14 (D) The trust shall remain in effect for as long as the assuming
15 insurer, or any member or former member of a group of insurers,
16 shall have outstanding obligations due under the reinsurance
17 agreements subject to the trust.

18 (E) No later than February 28 of each year, the trustees of the
19 trust shall report to the commissioner in writing setting forth the
20 balance of the trust and listing the trust's investments at the
21 preceding year end and shall certify the date of termination of the
22 trust, if so planned, or certify that the trust shall not expire within
23 the next 18 months.

24 (F) *The assuming insurer shall do both of the following:*

25 (i) *Submit to the jurisdiction of any court of competent*
26 *jurisdiction in any state of the United States, comply with all*
27 *requirements necessary to give the court jurisdiction, and abide*
28 *by the final decision of the court or of any appellate court in the*
29 *event of an appeal.*

30 (ii) *Designate the commissioner or an attorney in this state as*
31 *its true and lawful agent upon whom may be served any lawful*
32 *process in any action, suit, or proceeding instituted by or on behalf*
33 *of the ceding insurer.*

34 *This subparagraph is not intended to conflict with or override*
35 *the obligation of the parties to a reinsurance agreement to arbitrate*
36 *their disputes, if this obligation is created in the agreement.*

37 (G) *The assuming insurer shall agree in the trust agreement*
38 *that notwithstanding any other provision in the trust instrument,*
39 *if the trust fund is inadequate because it contains an amount less*
40 *than the amount required by paragraph (4) of subdivision (d), or*

1 *if the grantor of the trust has been declared insolvent or placed*
2 *into receivership, rehabilitation, liquidation, or similar proceedings*
3 *under the laws of its state or country of domicile:*

4 (i) *The trustee shall comply with an order of the commissioner*
5 *with regulatory oversight over the trust or with an order of a court*
6 *of competent jurisdiction directing the trustee to transfer to the*
7 *commissioner with regulatory oversight all of the assets of the*
8 *trust fund.*

9 (ii) *The assets shall be distributed by, and insurance claims*
10 *shall be filed with and valued by, the commissioner with regulatory*
11 *oversight in accordance with the laws of the state in which the*
12 *trust is domiciled that are applicable to the liquidation of domestic*
13 *insurance companies.*

14 (iii) *If the commissioner with regulatory oversight determines*
15 *that the assets of the trust fund or any part thereof are not*
16 *necessary to satisfy the claims of the United States ceding insurers*
17 *of the grantor of the trust, the assets or part thereof shall be*
18 *returned by the commissioner with regulatory oversight to the*
19 *trustee for distribution in accordance with the trust agreement.*

20 (iv) *The grantor hereby waives any right otherwise available*
21 *to it under United States law that is inconsistent with this provision.*

22 (4) The following requirements apply to the following categories
23 of assuming insurer:

24 (A) The trust fund for a single assuming insurer shall consist
25 of funds in trust in an amount not less than the assuming insurer's
26 liabilities attributable to reinsurance ceded by United States
27 domiciled ceding insurers, and, in addition, the assuming insurer
28 shall maintain a trustee surplus of not less than twenty million
29 dollars (\$20,000,000), *except as provided in subparagraph (B),*
30 *(C), or (D).*

31 (B) In the case of a group including incorporated and individual
32 unincorporated underwriters:

33 (i) For reinsurance ceded under reinsurance agreements with
34 an inception, amendment, or renewal date on or after ~~August 1,~~
35 ~~1995 January 1, 1993,~~ the trust shall consist of a trustee account
36 in an amount not less than the ~~group's~~ *respective underwriters'*
37 *several liabilities attributable to business ceded by United States*
38 *domiciled ceding insurers to any member underwriter of the group.*

39 (ii) For reinsurance ceded under reinsurance agreements with
40 an inception date on or before ~~July 31, 1995~~ *December 31, 1992,*

1 and not amended or renewed after that date, notwithstanding the
2 other provisions of this article, the trust shall consist of a trustee
3 account in an amount not less than the ~~group's~~ *respective*
4 *underwriters'* several insurance and reinsurance liabilities
5 attributable to business written in the United States.

6 (iii) In addition to the trusts required in clauses (i) and (ii), the
7 group shall maintain in trust a trustee surplus of which one
8 hundred million dollars (\$100,000,000) shall be held jointly for
9 the benefit of the United States domiciled ceding insurers of any
10 member of the group for all years of account.

11 (iv) The incorporated members of the group shall not be engaged
12 in any business other than underwriting as a member of the group
13 and shall be subject to the same level of regulation and solvency
14 control by the group's domiciliary regulator as are the
15 unincorporated members.

16 (v) The group shall, within 90 days after its financial statements
17 are due to be filed with the group's domiciliary regulator, provide
18 to the commissioner an annual certification by the group's
19 domiciliary regulator of the solvency of each underwriter member;
20 or if a certification is unavailable, financial statements prepared
21 by independent public accountants of each underwriter member
22 of the group.

23 (C) In the case of a group of incorporated insurers under
24 common administration, the group shall meet all of the following
25 requirements:

26 (i) Have continuously transacted an insurance business outside
27 the United States for at least three years immediately prior to
28 making application for accreditation and be in good standing with
29 its domiciliary regulator.

30 (ii) Demonstrate that individual insurer members maintain
31 standards and financial conditions reasonably comparable to
32 admitted insurers.

33 (iii) Maintain aggregate policyholders' surplus of at least ten
34 billion dollars (\$10,000,000,000).

35 (iv) Maintain a trust fund in an amount not less than the group's
36 several liabilities attributable to business ceded by United States
37 domiciled ceding insurers to any member of the group pursuant
38 to reinsurance contracts issued in the name of such group.

39 (v) In addition, maintain a joint trustee surplus of which one
40 hundred million dollars (\$100,000,000) shall be held jointly for

1 the benefit of United States ceding insurers of any member of the
2 group as additional security for these liabilities. The commissioner
3 shall have the authority to require additional amounts to be held
4 in the trust as a condition for initial or continued accreditation if
5 the commissioner determines that these additional amounts are
6 required for the protection of ceding insurers.

7 (vi) Within 90 days after its financial statements are due to be
8 filed with the group's domiciliary regulator, make available to the
9 commissioner an annual certification of each underwriter member's
10 solvency by the member's domiciliary regulator, and financial
11 statements for each underwriter member of the group prepared by
12 its independent public accountant.

13 ~~(5) The actual costs and expenses incurred by the department~~
14 ~~to review the trusts and subsequent amendments established or~~
15 ~~maintained pursuant to this subdivision shall be charged to and~~
16 ~~collected from the requesting reinsurer or group. If the reinsurer~~
17 ~~or group fails to pay the actual costs and expenses promptly when~~
18 ~~due, the commissioner may refuse to allow credit for reinsurance~~
19 ~~ceded to that reinsurer or group.~~

20 *(D) At any time after the assuming insurer has permanently*
21 *discontinued underwriting new business secured by the trust for*
22 *at least three full years, the commissioner may authorize a*
23 *reduction in the required trustee surplus, but only after a finding,*
24 *based on an assessment of the risk, that the new required surplus*
25 *level is adequate for the protection of United States ceding*
26 *insurers, policyholders, and claimants in light of reasonably*
27 *foreseeable adverse loss development. The risk assessment may*
28 *involve an actuarial review, including an independent analysis of*
29 *reserves and cash flows, and shall consider all material risk*
30 *factors, including, when applicable, the lines of business involved,*
31 *the stability of the incurred loss estimates, and the effect of the*
32 *surplus requirements on the assuming insurer's liquidity or*
33 *solvency. The minimum required trustee surplus may not be*
34 *reduced to an amount less than 50 percent of the assuming*
35 *insurer's liabilities attributable to reinsurance ceded by United*
36 *States ceding insurers covered by the trust.*

37 ~~(d)~~

38 *(e) Credit shall be allowed when the reinsurance ceded to an*
39 *assuming insurer not meeting the requirements of subdivision (a),*
40 *(b), ~~or~~ (c), or (d), but only as to the insurance of risks located in*

1 jurisdictions where the reinsurance is required by applicable law
2 or regulation of that jurisdiction. *As used in this section,*
3 *“jurisdiction” means state, district, or territory of the United States*
4 *and any lawful national government.*

5 ~~(e) If the assuming insurer is not licensed or accredited to~~
6 ~~transact insurance or reinsurance in this state, the credit permitted~~
7 ~~by subdivision (c) shall not be allowed unless the assuming insurer~~
8 ~~does both of the following:~~

9 ~~(1) Submits to the jurisdiction of any court of competent~~
10 ~~jurisdiction in any state of the United States, complies with all~~
11 ~~requirements necessary to give such court jurisdiction, and abides~~
12 ~~by the final decision of the court or of any appellate court in the~~
13 ~~event of an appeal.~~

14 ~~(2) Designates the commissioner or a designated attorney in~~
15 ~~this state as its true and lawful attorney upon whom may be served~~
16 ~~any lawful process in any action, suit, or proceeding instituted by~~
17 ~~or on behalf of the ceding insurer.~~

18 ~~This subdivision is not intended to conflict with or override the~~
19 ~~obligation of the parties to a reinsurance agreement to arbitrate~~
20 ~~their disputes, if this obligation is created in the agreement.~~

21 ~~(f) If the assuming insurer does not meet the requirements of~~
22 ~~subdivision (a), (b), or (d), the credit permitted by subdivision (c)~~
23 ~~shall not be allowed unless the assuming insurer agrees in the trust~~
24 ~~agreement that notwithstanding any other provision in the trust~~
25 ~~instrument, if the trust fund is inadequate because it contains an~~
26 ~~amount less than the amount required by paragraph (4) of~~
27 ~~subdivision (c), or if the grantor of the trust has been declared~~
28 ~~insolvent or placed into receivership, rehabilitation, liquidation,~~
29 ~~or similar proceedings under the laws of its state or country of~~
30 ~~domicile:~~

31 ~~(1) The trustee shall comply with an order of the commissioner~~
32 ~~with regulatory oversight over the trust or with an order of a court~~
33 ~~of competent jurisdiction directing the trustee to transfer to the~~
34 ~~commissioner with regulatory oversight all of the assets of the~~
35 ~~trust fund.~~

36 ~~(2) The assets shall be distributed by, and insurance claims shall~~
37 ~~be filed with and valued by, the commissioner with regulatory~~
38 ~~oversight in accordance with the laws of the state in which the~~
39 ~~trust is domiciled that are applicable to the liquidation of domestic~~
40 ~~insurance companies.~~

~~(3) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.~~

~~(4) The grantor hereby waives any right otherwise available to it under United States law that is inconsistent with this provision.~~

SEC. 5. Section 922.41 is added to the Insurance Code, to read:

922.41. (a) Credit shall be allowed a domestic insurer when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this section. Credit shall be allowed at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of this section, any regulations promulgated by the commissioner and Section 922.5.

(b) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(1) The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subdivisions (f) and (g).

(2) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner, but no less than two hundred fifty million dollars (\$250,000,000) calculated in accordance with subparagraph (H) of paragraph (1) of subdivision (h) of this section or subparagraph (D) of paragraph (3) of subdivision (d) of Section 922.4. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred fifty million dollars (\$250,000,000) and a central fund containing a balance of at least two hundred fifty million dollars (\$250,000,000).

1 (3) *The assuming insurer shall maintain financial strength*
2 *ratings from two or more rating agencies deemed acceptable by*
3 *the commissioner. These ratings shall be based on interactive*
4 *communication between the rating agency and the assuming*
5 *insurer and shall not be based solely on publicly available*
6 *information. These financial strength ratings will be one factor*
7 *used by the commissioner in determining the rating that is assigned*
8 *to the assuming insurer. Acceptable rating agencies include the*
9 *following:*

10 (A) *Standard & Poor's.*
11 (B) *Moody's Investors Service.*
12 (C) *Fitch Ratings.*
13 (D) *A.M. Best Company.*
14 (E) *Any other nationally recognized statistical rating*
15 *organization.*

16 (4) *The assuming insurer shall agree to submit to the jurisdiction*
17 *of this state, appoint the commissioner or a designated attorney*
18 *in this state as its agent for service of process in this state, and*
19 *agree to provide security for 100 percent of the assuming insurer's*
20 *liabilities attributable to reinsurance ceded by United States ceding*
21 *insurers if it resists enforcement of a final United States judgment.*

22 (5) *The assuming insurer shall agree to meet applicable*
23 *information filing requirements as determined by the commissioner,*
24 *both with respect to an initial application for certification and on*
25 *an ongoing basis.*

26 (6) *The certified reinsurer shall comply with any other*
27 *requirements deemed relevant by the commissioner.*

28 (c) (1) *If an applicant for certification has been certified as a*
29 *reinsurer in an NAIC accredited jurisdiction, the commissioner*
30 *may defer to that jurisdiction's certification, and has the discretion*
31 *to defer to the rating assigned by that jurisdiction if the assuming*
32 *insurer submits a properly executed Form CR-1 (as published on*
33 *the department's Internet Web site), and such additional*
34 *information as the commissioner requires. The commissioner,*
35 *however, may perform an independent review and determination*
36 *of any applicant. The assuming insurer shall then be considered*
37 *to be a certified reinsurer in this state.*

38 (2) *If the commissioner defers to a certification determination*
39 *by another state, any change in the certified reinsurer's status or*
40 *rating in the other jurisdiction shall apply automatically in this*

1 state as of the date it takes effect in the other jurisdiction unless
2 the commissioner otherwise determines. The certified reinsurer
3 shall notify the commissioner of any change in its status or rating
4 within 10 days after receiving notice of the change.

5 (3) The commissioner may withdraw recognition of the other
6 jurisdiction's rating at any time and assign a new rating in
7 accordance with subdivision (h).

8 (4) The commissioner may withdraw recognition of the other
9 jurisdiction's certification at any time, with written notice to the
10 certified reinsurer. Unless the commissioner suspends or revokes
11 the certified reinsurer's certification in accordance with this
12 section and Section 922.42, the certified reinsurer's certification
13 shall remain in good standing in this state for a period of three
14 months, which shall be extended if additional time is necessary to
15 consider the assuming insurer's application for certification in
16 this state.

17 (d) An association including incorporated and individual
18 unincorporated underwriters may be a certified reinsurer. In order
19 to be eligible for certification, in addition to satisfying requirements
20 of subdivision (c) and subparagraphs (B) and (C) of paragraph
21 (4) of subdivision (d) of Section 922.4.

22 (1) The association shall satisfy its minimum capital and surplus
23 requirements through the capital and surplus equivalents (net of
24 liabilities) of the association and its members, which shall include
25 a joint central fund that may be applied to any unsatisfied
26 obligation of the association or any of its members, in an amount
27 determined by the commissioner to provide adequate protection.

28 (2) The incorporated members of the association shall not be
29 engaged in any business other than underwriting as a member of
30 the association and shall be subject to the same level of regulation
31 and solvency control by the association's domiciliary regulator
32 as are the unincorporated members.

33 (3) Within 90 days after its financial statements are due to be
34 filed with the association's domiciliary regulator, the association
35 shall provide to the commissioner an annual certification by the
36 association's domiciliary regulator of the solvency of each
37 underwriter member; or if a certification is unavailable, financial
38 statements, prepared by independent public accountants, of each
39 underwriter member of the association.

1 (e) (1) *The commissioner shall post notice on the department's*
2 *Internet Web site promptly upon receipt of any application for*
3 *certification, including instructions on how members of the public*
4 *may respond to the application. The commissioner may not take*
5 *final action on the application until at least 90 days after posting*
6 *the notice required by this subdivision.*

7 (2) *The commissioner shall issue written notice to an assuming*
8 *insurer that has made application and been approved as a certified*
9 *reinsurer. Included in such notice shall be the rating assigned the*
10 *certified reinsurer in accordance with subdivision (h). The*
11 *commissioner shall publish a list of all certified reinsurers and*
12 *their ratings.*

13 (f) *The certified reinsurer shall agree to meet applicable*
14 *information filing requirements as determined by the commissioner,*
15 *both with respect to an initial application for certification and on*
16 *an ongoing basis. All information submitted by certified reinsurers*
17 *that is not otherwise public information subject to disclosure shall*
18 *be exempted from disclosure under Chapter 3.5 (commencing with*
19 *Section 6250) of Division 7 of Title 1 of the Government Code,*
20 *and shall be withheld from public disclosure. The applicable*
21 *information filing requirements are as follows:*

22 (1) *Notification within 10 days of any regulatory actions taken*
23 *against the certified reinsurer, any change in the provisions of its*
24 *domiciliary license or any change in rating by an approved rating*
25 *agency, including a statement describing those changes and the*
26 *reasons for those changes.*

27 (2) *Annually, Form CR-F or CR-S, as applicable pursuant to*
28 *the instructions as published on the department's Internet Web*
29 *site.*

30 (3) *Annually, the report of the independent auditor on the*
31 *financial statements of the insurance enterprise, on the basis*
32 *described in paragraph (4).*

33 (4) *Annually, audited financial statements (audited United States*
34 *Generally Accepted Accounting Principles), regulatory filings,*
35 *and actuarial opinion (as filed with the certified reinsurer's*
36 *supervisor) statements, (audited United States Generally Accepted*
37 *Accounting Principles basis if available, audited International*
38 *Financial Reporting Standards basis statements are allowed but*
39 *must include an audited footnote reconciling equity and net income*
40 *to a United States Generally Accepted Accounting Principles basis,*

1 *or, with the written permission of the commissioner, audited*
2 *International Financial Reporting Standards statements with*
3 *reconciliation to United States Generally Accepted Accounting*
4 *Principles certified by an officer of the company), regulatory*
5 *filings, and actuarial opinion (as filed with the certified reinsurer's*
6 *supervisor). Upon the initial certification, audited financial*
7 *statements for the last three years filed with the certified reinsurer's*
8 *supervisor.*

9 *(5) At least annually, an updated list of all disputed and overdue*
10 *reinsurance claims regarding reinsurance assumed from United*
11 *States domestic ceding insurers.*

12 *(6) A certification from the certified reinsurer's domestic*
13 *regulator that the certified reinsurer is in good standing and*
14 *maintains capital in excess of the jurisdiction's highest regulatory*
15 *action level.*

16 *(7) Any other information that the commissioner may reasonably*
17 *require.*

18 *(g) If the commissioner certifies a non-United States domiciled*
19 *insurer, the commissioner shall create and publish a list of*
20 *qualified jurisdictions, under which an assuming insurer licensed*
21 *and domiciled in such jurisdiction is eligible to be considered for*
22 *certification by the commissioner as a certified reinsurer.*

23 *(1) In order to determine whether the domiciliary jurisdiction*
24 *of a non-United States assuming insurer is eligible to be recognized*
25 *as a qualified jurisdiction, the commissioner shall evaluate the*
26 *appropriateness and effectiveness of the reinsurance supervisory*
27 *system of the jurisdiction, both initially and on an ongoing basis,*
28 *and consider the rights, benefits and the extent of reciprocal*
29 *recognition afforded by the non-United States jurisdiction to*
30 *reinsurers licensed and domiciled in the United States. The*
31 *commissioner shall determine the appropriate process for*
32 *evaluating the qualifications of those jurisdictions. Prior to its*
33 *listing, a qualified jurisdiction shall agree in writing to share*
34 *information and cooperate with the commissioner with respect to*
35 *all certified reinsurers domiciled within that jurisdiction. A*
36 *jurisdiction may not be recognized as a qualified jurisdiction if*
37 *the commissioner has determined that the jurisdiction does not*
38 *adequately and promptly enforce final United States judgments*
39 *and arbitration awards. Additional factors may be considered in*

1 *the discretion of the commissioner, including, but not limited to,*
2 *the following:*

3 *(A) The framework under which the assuming insurer is*
4 *regulated.*

5 *(B) The structure and authority of the domiciliary regulator*
6 *with regard to solvency regulation requirements and financial*
7 *surveillance.*

8 *(C) The substance of financial and operating standards for*
9 *assuming insurers in the domiciliary jurisdiction.*

10 *(D) The form and substance of financial reports required to be*
11 *filed or made publicly available by reinsurers in the domiciliary*
12 *jurisdiction and the accounting principles used.*

13 *(E) The domiciliary regulator's willingness to cooperate with*
14 *United States regulators in general and the commissioner in*
15 *particular.*

16 *(F) The history of performance by assuming insurers in the*
17 *domiciliary jurisdiction.*

18 *(G) Any documented evidence of substantial problems with the*
19 *enforcement of final United States judgments in the domiciliary*
20 *jurisdiction.*

21 *(H) Any relevant international standards or guidance with*
22 *respect to mutual recognition of reinsurance supervision adopted*
23 *by the International Association of Insurance Supervisors or a*
24 *successor organization.*

25 *(I) Any other matters deemed relevant by the commissioner.*

26 *(2) The commissioner shall consider the list of qualified*
27 *jurisdictions published through the National Association of*
28 *Insurance Commissioners (NAIC) committee process in*
29 *determining qualified jurisdictions. The commissioner may include*
30 *on the list published pursuant to this section, any jurisdiction on*
31 *the NAIC list of qualified jurisdictions, or on any equivalent list*
32 *of the United States Treasury.*

33 *(3) If the commissioner approves a jurisdiction as qualified that*
34 *does not appear on either the NAIC list of qualified jurisdictions,*
35 *or the United States Treasury list, the commissioner shall provide*
36 *thoroughly documented justification in accordance with criteria*
37 *to be developed under this section.*

38 *(4) United States jurisdictions that meet the requirements for*
39 *accreditation under the NAIC financial standards and accreditation*
40 *program shall be recognized as qualified jurisdictions.*

1 (5) *If a certified reinsurer's domiciliary jurisdiction ceases to*
2 *be a qualified jurisdiction, the commissioner has the discretion to*
3 *suspend the reinsurer's certification indefinitely, in lieu of*
4 *revocation.*

5 (h) *The commissioner shall assign a rating to each certified*
6 *reinsurer, giving due consideration to the financial strength ratings*
7 *that have been assigned by rating agencies deemed acceptable to*
8 *the commissioner pursuant to this section. The commissioner shall*
9 *publish a list of all certified reinsurers and their ratings.*

10 (1) *Each certified reinsurer shall be rated on a legal entity basis,*
11 *with due consideration being given to the group rating where*
12 *appropriate, except that an association including incorporated*
13 *and individual unincorporated underwriters that has been*
14 *approved to do business as a single certified reinsurer may be*
15 *evaluated on the basis of its group rating. Factors that may be*
16 *considered as part of the evaluation process include, but are not*
17 *limited to, the following:*

18 (A) *The certified reinsurer's financial strength rating from an*
19 *acceptable rating agency. The maximum rating that a certified*
20 *reinsurer may be assigned will correspond to its financial strength*
21 *rating as set forth in regulations promulgated by the commissioner.*
22 *The commissioner shall use the lowest financial strength rating*
23 *received from an approved rating agency in establishing the*
24 *maximum rating of a certified reinsurer. A failure to obtain or*
25 *maintain at least two financial strength ratings from acceptable*
26 *rating agencies will result in loss of eligibility for certification.*

27 (B) *The business practices of the certified reinsurer in dealing*
28 *with its ceding insurers, including its record of compliance with*
29 *reinsurance contractual terms and obligations.*

30 (C) *For certified reinsurers domiciled in the United States, a*
31 *review of the most recent applicable NAIC Annual Statement Blank,*
32 *either Schedule F (for property/casualty reinsurers) or Schedule*
33 *S (for life and health reinsurers).*

34 (D) *For certified reinsurers not domiciled in the United States,*
35 *a review annually of Form CR-F (for property/casualty reinsurers)*
36 *or Form CR-S (for life and health reinsurers) (as published on the*
37 *department's Internet Web site).*

38 (E) *The reputation of the certified reinsurer for prompt payment*
39 *of claims under reinsurance agreements, based on an analysis of*
40 *ceding insurers' Schedule F reporting of overdue reinsurance*

1 *recoverables, including the proportion of obligations that are more*
2 *than 90 days past due or are in dispute, with specific attention*
3 *given to obligations payable to companies that are in*
4 *administrative supervision or receivership.*

5 *(F) Regulatory actions against the certified reinsurer.*

6 *(G) The report of the independent auditor on the financial*
7 *statements of the insurance enterprise, on the basis described in*
8 *subparagraph (H).*

9 *(H) For certified reinsurers not domiciled in the United States,*
10 *audited financial statements on a United States Generally Accepted*
11 *Accounting Principles basis, regulatory filings, and actuarial*
12 *opinion (as filed with the non-United States jurisdiction supervisor)*
13 *statements, (audited United States Generally Accepted Accounting*
14 *Principles basis if available, audited International Financial*
15 *Reporting Standards basis statements are allowed but must include*
16 *an audited footnote reconciling equity and net income to a United*
17 *States Generally Accepted Accounting Principles basis, or, with*
18 *the written permission of the commissioner, audited International*
19 *Financial Reporting Standards statements with reconciliation to*
20 *United States Generally Accepted Accounting Principles certified*
21 *by an officer of the company), regulatory filings, and actuarial*
22 *opinion (as filed with the non-United States jurisdiction*
23 *supervisor). Upon the initial application for certification, the*
24 *commissioner will consider audited financial statements for the*
25 *last three years filed with its non-United States jurisdiction*
26 *supervisor.*

27 *(I) The liquidation priority of obligations to a ceding insurer*
28 *in the certified reinsurer's domiciliary jurisdiction in the context*
29 *of an insolvency proceeding.*

30 *(J) A certified reinsurer's participation in any solvent scheme*
31 *of arrangement, or similar procedure, which involves United States*
32 *ceding insurers. The commissioner shall receive prior notice from*
33 *a certified reinsurer that proposes participation by the certified*
34 *reinsurer in a solvent scheme of arrangement.*

35 *(K) Any other information deemed relevant by the commissioner.*

36 *(2) Based on the analysis conducted under subparagraph (E)*
37 *of paragraph (1) of a certified reinsurer's reputation for prompt*
38 *payment of claims, the commissioner may make appropriate*
39 *adjustments in the security the certified reinsurer is required to*
40 *post to protect its liabilities to United States ceding insurers,*

1 *provided that the commissioner shall, at a minimum, increase the*
2 *security the certified reinsurer is required to post by one rating*
3 *level under regulations promulgated by the commissioner, if the*
4 *commissioner finds either of the following:*

5 *(A) More than 15 percent of the certified reinsurer's ceding*
6 *insurance clients have overdue reinsurance recoverables on paid*
7 *losses of 90 days or more which are not in dispute and which*
8 *exceed one hundred thousand dollars (\$100,000) for each ceding*
9 *insurer.*

10 *(B) The aggregate amount of reinsurance recoverables on paid*
11 *losses which are not in dispute that are overdue by 90 days or*
12 *more exceeds fifty million dollars (\$50,000,000).*

13 *(3) The assuming insurer shall submit a properly executed Form*
14 *CR-1 (as published on the department's Internet Web site) as*
15 *evidence of its submission to the jurisdiction of this state,*
16 *appointment of the commissioner as an agent for service of process*
17 *in this state, and agreement to provide security for 100 percent of*
18 *the assuming insurer's liabilities attributable to reinsurance ceded*
19 *by United States ceding insurers if it resists enforcement of a final*
20 *United States judgment. The commissioner shall not certify any*
21 *assuming insurer that is domiciled in a jurisdiction that the*
22 *commissioner has determined does not adequately and promptly*
23 *enforce final United States judgments or arbitration awards.*

24 *(4) (A) In the case of a downgrade by a rating agency or other*
25 *disqualifying circumstance, the commissioner shall, upon written*
26 *notice, assign a new rating to the certified reinsurer in accordance*
27 *with the requirements of subdivision (a).*

28 *(B) The commissioner shall have the authority to suspend,*
29 *revoke, or otherwise modify a certified reinsurer's certification at*
30 *any time if the certified reinsurer fails to meet its obligations or*
31 *security requirements under this section, or if other financial or*
32 *operating results of the certified reinsurer, or documented*
33 *significant delays in payment by the certified reinsurer, lead the*
34 *commissioner to reconsider the certified reinsurer's ability or*
35 *willingness to meet its contractual obligations.*

36 *(C) If the rating of a certified reinsurer is upgraded by the*
37 *commissioner, the certified reinsurer may meet the security*
38 *requirements applicable to its new rating on a prospective basis,*
39 *but the commissioner shall require the certified reinsurer to post*
40 *security under the previously applicable security requirements as*

1 to all contracts in force on or before the effective date of the
2 upgraded rating. If the rating of a certified reinsurer is
3 downgraded by the commissioner, the commissioner shall require
4 the certified reinsurer to meet the security requirements applicable
5 to its new rating for all business it has assumed as a certified
6 reinsurer.

7 (D) Upon revocation of the certification of a certified reinsurer
8 by the commissioner, the assuming insurer shall be required to
9 post security in accordance with Section 922.5 in order for the
10 ceding insurer to continue to take credit for reinsurance ceded to
11 the assuming insurer. If funds continue to be held in trust in
12 accordance with subdivision (d) of Section 922.4, the commissioner
13 may allow additional credit equal to the ceding insurer's pro rata
14 share of those funds, discounted to reflect the risk of uncollectibility
15 and anticipated expenses of trust administration. Notwithstanding
16 the change of a certified reinsurer's rating or revocation of its
17 certification, a domestic insurer that has ceded reinsurance to that
18 certified reinsurer may not be denied credit for reinsurance for a
19 period of three months for all reinsurance ceded to that certified
20 reinsurer, unless the reinsurance is found by the commissioner to
21 be at high risk of uncollectibility.

22 (i) A certified reinsurer shall secure obligations assumed from
23 United States ceding insurers under this subdivision at a level
24 consistent with its rating, as specified in regulations promulgated
25 by the commissioner.

26 (1) In order for a domestic ceding insurer to qualify for full
27 financial statement credit for reinsurance ceded to a certified
28 reinsurer, the certified reinsurer shall maintain security in a form
29 acceptable to the commissioner and consistent with the provisions
30 of Section 922.5, or in a multibeneficiary trust in accordance with
31 subdivision (d) of Section 922.4, except as otherwise provided in
32 this subdivision.

33 (2) If a certified reinsurer maintains a trust to fully secure its
34 obligations subject to subdivision (d) of Section 922.4, and chooses
35 to secure its obligations incurred as a certified reinsurer in the
36 form of a multibeneficiary trust, the certified reinsurer shall
37 maintain separate trust accounts for its obligations incurred under
38 reinsurance agreements issued or renewed as a certified reinsurer
39 with reduced security as permitted by this subdivision or
40 comparable laws of other United States jurisdictions and for its

1 obligations subject to subdivision (d) of Section 922.4. It shall be
2 a condition to the grant of certification under this section that the
3 certified reinsurer shall have bound itself, by the language of the
4 trust and agreement with the commissioner with principal
5 regulatory oversight of each of those trust accounts, to fund, upon
6 termination of any of those trust accounts, out of the remaining
7 surplus of those trusts any deficiency of any other of those trust
8 accounts.

9 (3) The minimum trustee surplus requirements provided in
10 subdivision (d) of Section 922.4 are not applicable with respect
11 to a multibeneficiary trust maintained by a certified reinsurer for
12 the purpose of securing obligations incurred under this subdivision,
13 except that the trust shall maintain a minimum trustee surplus of
14 ten million dollars (\$10,000,000).

15 (4) With respect to obligations incurred by a certified reinsurer
16 under this subdivision, if the security is insufficient, the
17 commissioner shall reduce the allowable credit by an amount
18 proportionate to the deficiency, and have the discretion to impose
19 further reductions in allowable credit upon finding that there is a
20 material risk that the certified reinsurer's obligations will not be
21 paid in full when due.

22 (5) For purposes of this subdivision, a certified reinsurer whose
23 certification has been terminated for any reason shall be treated
24 as a certified reinsurer required to secure 100 percent of its
25 obligations.

26 (A) As used in this subdivision, the term "terminated" means
27 revocation, suspension, voluntary surrender, and inactive status.

28 (B) If the commissioner continues to assign a higher rating as
29 permitted by other provisions of this section, this requirement shall
30 not apply to a certified reinsurer in inactive status or to a reinsurer
31 whose certification has been suspended.

32 (6) The commissioner shall require the certified reinsurer to
33 post 100-percent security in accordance with Section 922.5, for
34 the benefit of the ceding insurer or its estate, upon the entry of an
35 order of rehabilitation, liquidation, or conservation against the
36 ceding insurer.

37 (7) Affiliated reinsurance transactions shall receive the same
38 opportunity for reduced security requirements as all other
39 reinsurance transactions.

1 (8) In order to facilitate the prompt payment of claims, a
2 certified reinsurer shall not be required to post security for
3 catastrophe recoverables for a period of one year from the date
4 of the first instance of a liability reserve entry by the ceding
5 company as a result of a loss from a catastrophic occurrence as
6 recognized by the commissioner. The one-year deferral period is
7 contingent upon the certified reinsurer continuing to pay claims
8 in a timely manner. Reinsurance recoverables for only the
9 following lines of business as reported on the NAIC annual
10 financial statement related specifically to the catastrophic
11 occurrence will be included in the deferral:

12 (A) Line 1: Fire.

13 (B) Line 2: Allied lines.

14 (C) Line 3: Farmowners multiple peril.

15 (D) Line 4: Homeowners multiple peril.

16 (E) Line 5: Commercial multiple peril.

17 (F) Line 9: Inland marine.

18 (G) Line 12: Earthquake.

19 (H) Line 21: Auto physical damage.

20 (9) Credit for reinsurance under this section shall apply only
21 to reinsurance contracts entered into or renewed on or after the
22 effective date of the certification of the assuming insurer. Any
23 reinsurance contract entered into prior to the effective date of the
24 certification of the assuming insurer that is subsequently amended
25 after the effective date of the certification of the assuming insurer,
26 or a new reinsurance contract, covering any risk for which
27 collateral was provided previously, shall only be subject to this
28 section with respect to losses incurred and reserves reported from
29 and after the effective date of the amendment or new contract.

30 (10) Nothing in this section shall be construed to prohibit the
31 parties to a reinsurance agreement from agreeing to provisions
32 establishing security requirements that exceed the minimum
33 security requirements established for certified reinsurers under
34 this section.

35 (j) A certified reinsurer that ceases to assume new business in
36 this state may request to maintain its certification in inactive status
37 in order to continue to qualify for a reduction in security for its
38 in-force business. An inactive certified reinsurer shall continue to
39 comply with all applicable requirements of this section, and the
40 commissioner shall assign a rating that takes into account, if

1 relevant, the reasons why the reinsurer is not assuming new
2 business.

3 (k) Notwithstanding this section, credit for reinsurance or
4 deduction from liability by a domestic ceding insurer for cessions
5 to a certified reinsurer may be disallowed upon a finding by the
6 commissioner that the application of the literal provisions of this
7 section does not accomplish its intent, or either the financial
8 condition of the reinsurer or the collateral or other security
9 provided by the reinsurer does not, in substance, satisfy the credit
10 for reinsurance requirements in Section 922.4.

11 (l) This section shall remain in effect only until January 1, 2016,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2016, deletes or extends that date.

14 SEC. 6. Section 922.42 is added to the Insurance Code, to
15 read:

16 922.42. (a) If an accredited or certified reinsurer ceases to
17 meet the requirements for accreditation or certification, the
18 commissioner may suspend or revoke the reinsurer's accreditation
19 or certification.

20 (b) The commissioner shall give the reinsurer notice and
21 opportunity for hearing. The suspension or revocation shall not
22 take effect until after the commissioner's order on hearing, unless
23 any of the following applies:

24 (1) The reinsurer waives its right to hearing.

25 (2) The commissioner's order is based on regulatory action by
26 the reinsurer's domiciliary jurisdiction or the voluntary surrender
27 or termination of the reinsurer's eligibility to transact insurance
28 or reinsurance business in its domiciliary jurisdiction or in the
29 primary certifying state of the reinsurer under subdivision (b) of
30 Section 922.41.

31 (3) The commissioner finds that an emergency requires
32 immediate action and a court of competent jurisdiction has not
33 stayed the commissioner's action.

34 (c) While a reinsurer's accreditation or certification is
35 suspended, no reinsurance contract issued or renewed after the
36 effective date of the suspension qualifies for credit except to the
37 extent that the reinsurer's obligations under the contract are
38 secured in accordance with Section 922.5. If a reinsurer's
39 accreditation or certification is revoked, no credit for reinsurance
40 may be granted after the effective date of the revocation except to

1 *the extent that the reinsurer's obligations under the contract are*
2 *secured in accordance with subdivision (h) of Section 922.41 or*
3 *Section 922.5.*

4 *SEC. 7. Section 922.43 is added to the Insurance Code, to*
5 *read:*

6 *922.43. The actual costs and expenses incurred by the*
7 *department in reviewing requests for accreditation or certification,*
8 *trusts, and subsequent amendments established or maintained*
9 *pursuant to Sections 922.1 to 922.7, inclusive, and subsequent*
10 *reviews, shall be charged to and collected from the requesting*
11 *reinsurer. If the reinsurer fails to pay the actual costs and expenses*
12 *promptly when due, then the commissioner may deny the requests,*
13 *may refuse to allow credit for reinsurance ceded to that reinsurer*
14 *or group, or may revoke the reinsurer's accreditation or*
15 *certification.*

16 *SEC. 8. Section 922.5 of the Insurance Code is amended to*
17 *read:*

18 *922.5. (a) An asset or a deduction from liability for reinsurance*
19 *ceded by a domestic insurer to an assuming insurer not meeting*
20 *the requirements of Section 922.4 shall be allowed in an amount*
21 *not exceeding the liabilities carried by the ceding insurer to the*
22 *extent of either of the following:*

23 *(1) The asset or deduction is not greater than the amount of*
24 *funds held by the ceding insurer under a reinsurance contract with*
25 *that assuming insurer as security for the payment of obligations*
26 *thereunder and such funds are held in the United States under the*
27 *exclusive control of the ceding insurer.*

28 *(2) The asset or deduction is not greater than the amount of*
29 *funds held in a trust, satisfactory to the commissioner, on behalf*
30 *of the ceding insurer under a reinsurance contract with such*
31 *assuming insurer as security for the payment of obligations*
32 *thereunder and is held in a qualified United States financial*
33 *institution, as defined in subdivision (b) of Section 922.7, subject*
34 *to withdrawal solely by the ceding insurer.*

35 *The security under this subdivision may be in the form of cash*
36 *or securities authorized as general investments under Article 3*
37 *(commencing with Section 1170) of Chapter 2, or securities listed*
38 *by the Securities Valuation Office of the NAIC, including those*
39 *deemed exempt from filing, as defined by the Purposes and*
40 *Procedures Manual of the National Association of Insurance*

1 *Commissioners Securities Valuation Office*, qualifying as admitted
2 assets under this code and with liquidity meeting the requirements
3 of Section 706.5, *and not otherwise disallowed in the*
4 *commissioner's discretion.*

5 (b) An asset or a deduction from liability for reinsurance ceded
6 by a domestic insurer to an assuming insurer not meeting the
7 requirements of Section 922.4 shall be allowed in an amount not
8 exceeding the liabilities carried by the ceding insurer to the extent
9 that security is provided in the form of letters of credit, satisfactory
10 to the commissioner, which shall be:

11 (1) Clean, irrevocable, unconditional letters of credit, issued or
12 confirmed by qualified United States financial institutions, as
13 defined in subdivision (a) of Section 922.7, effective no later than
14 December 31st in respect of the year for which filing is being
15 made, and in the possession of the ceding insurer on or before the
16 filing date of its annual statement.

17 (2) Letters of credit meeting applicable standards of issuer
18 acceptability as of the dates of their issuance or confirmation and
19 shall, notwithstanding the issuing or confirming institutions'
20 subsequent failure to meet applicable standards of issuer
21 acceptability, continue to be acceptable as security until their
22 expiration, extension, renewal, modification, or amendment,
23 whichever first occurs.

24 (c) *For purposes of this section, the phrase "deemed exempt*
25 *from filing as defined by the Purposes and Procedures Manual of*
26 *the National Association of Insurance Commissioners Securities*
27 *Valuation Office" shall mean all United States government*
28 *securities, and all other securities or bonds with a rating of SVO*
29 *1 or FE 1 listed by the National Association of Insurance*
30 *Commissioners Securities Valuation Office as exempt.*

31 *SEC. 9. Section 922.6 of the Insurance Code is repealed.*

32 ~~922.6.—(a) Unless credit for reinsurance or deduction from~~
33 ~~liability is disallowed pursuant to Section 922.3 or 923, credit for~~
34 ~~reinsurance or deduction from liability shall be allowed a foreign~~
35 ~~ceding insurer to the extent credit has been allowed by the ceding~~
36 ~~insurer's state of domicile if either:~~

37 ~~(1) The state of domicile is accredited by the NAIC.~~

38 ~~(2) Credit or deduction from liability would be allowed under~~
39 ~~this statute if the foreign ceding insurer were domiciled in this~~
40 ~~state.~~

1 ~~(b) Notwithstanding subdivision (a), credit for reinsurance or~~
2 ~~deduction from liability may be disallowed upon a finding by the~~
3 ~~commissioner that either the financial condition of the reinsurer,~~
4 ~~or the collateral or other security provided by the reinsurer, does~~
5 ~~not, in substance, satisfy the credit for reinsurance requirements~~
6 ~~applicable to ceding insurers domiciled in this state.~~

7 *SEC. 10. Section 922.6 is added to the Insurance Code, to*
8 *read:*

9 *922.6. Credit for reinsurance shall not be denied a foreign*
10 *ceding insurer to the extent that credit is recognized by the ceding*
11 *insurer's domestic state regulator, provided that the domestic state*
12 *is accredited by the National Association of Insurance*
13 *Commissioners (NAIC), or the domestic state regulator has*
14 *financial solvency requirements substantially similar to the*
15 *requirements necessary for NAIC accreditation.*

16 *SEC. 11. Section 922.8 of the Insurance Code is amended to*
17 *read:*

18 922.8. (a) The commissioner, after notice, comment period,
19 and a hearing if requested by more than 10 affected insurers, may
20 issue a bulletin setting forth reasonable requirements for the
21 allowance of reinsurance as an asset or deduction from liability
22 consistent with Sections 922.4 to 922.6, inclusive, including the
23 following:

24 (1) Filing requirements for an accredited assuming insurer.

25 (2) Accreditation requirements for an assuming insurer with
26 less than a twenty million dollars (\$20,000,000) surplus as regards
27 policyholders.

28 (3) The definition of "liabilities" as used in Sections 922.4 and
29 922.5.

30 (4) Investment guidelines for trust funds established and
31 maintained pursuant to subdivision ~~(e)~~ (d) of Section 922.4.

32 (5) Definitions and required or permitted conditions for trust
33 funds established and maintained pursuant to Section 922.5.

34 (6) Requirements of letters of credit established and maintained
35 pursuant to Section 922.5.

36 (b) On or before January 1, 1998, the commissioner shall notify
37 the Legislature that the bulletin has been promulgated so that the
38 Legislature is able to ensure the commissioner's compliance with
39 the requirements of this subdivision.

1 (c) The bulletin authorized by this section shall have the same
2 force and effect, and may be enforced by the commissioner to the
3 same extent and degree, as regulations issued by the commissioner
4 until the time that the commissioner issues additional or amended
5 regulations pursuant to subdivision (d).

6 (d) The commissioner shall adopt regulations implementing the
7 provisions of this law, that shall supersede the bulletin authorized
8 by this section, no later than December 31, 2001.

9 *SEC. 12. Section 922.85 is added to the Insurance Code, to*
10 *read:*

11 *922.85. The commissioner may adopt regulations in accordance*
12 *with the procedures provided in Chapter 3.5 (commencing with*
13 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
14 *Code or otherwise prescribe requirements consistent with Sections*
15 *922.4, 922.41, 922.42, 922.43, and 922.5.*

16 *SEC. 13. Section 12121 of the Insurance Code is amended to*
17 *read:*

18 12121. (a) For financial guaranty insurance that takes effect
19 on or after January 1, 1991, an insurer authorized to transact
20 financial guaranty insurance shall receive credit for reinsurance
21 as an asset or as a reduction from liabilities only if the reinsurance
22 is placed with a reinsurer as provided in subdivision (b), and if the
23 reinsurance agreement may be terminated or amended only if one
24 or more of the following applies:

25 (1) At the option of the reinsurer or the ceding insurer if the
26 reinsurance agreement provides that the liability of the reinsurer
27 with respect to policies in effect at the date of termination shall
28 continue until the expiration or cancellation of each such policy.

29 (2) With the consent of the ceding company, if the reinsurance
30 agreement provides for a cutoff of the reinsurance in force as of
31 the date of termination.

32 (3) At the discretion of the commissioner acting as rehabilitator,
33 liquidator, or receiver of the ceding or assuming insurer.

34 (b) Reinsurance may be placed with one of the following:

35 (1) Another financial guaranty insurance corporation admitted
36 pursuant to this article to transact financial guaranty insurance
37 which may be under common control with the ceding financial
38 guaranty insurer or financial guaranty corporation, but which does
39 not own, and is not owned by, in whole or in part, directly or

1 indirectly, the ceding financial guaranty insurer or financial
2 guaranty insurance corporation.

3 (2) Another financial guaranty insurance corporation admitted
4 pursuant to this article which does own, or is owned by, in whole
5 or in part, directly or indirectly, the ceding financial guaranty
6 insurer or financial guaranty insurance corporation provided that
7 (A) the value of the ownership interest in either case does not
8 exceed the greater of (i) 35 percent of its combined capital and
9 surplus or (ii) 50 percent of the excess of its surplus over its
10 liabilities and capital, and (B) the financial guaranty insurance
11 corporation providing the reinsurance is rated at the time of cession
12 and thereafter in one of the two top generic rating classifications
13 by a securities rating agency acceptable to the commissioner.

14 (3) An insurer admitted to transact surety insurance but not
15 financial guaranty insurance pursuant to this article, if the insurer
16 meets all of the following criteria:

17 (A) Has and maintains combined capital and surplus of at least
18 fifty million dollars (\$50,000,000).

19 (B) Establishes and maintains the reserves required in Sections
20 12108, 12109, and 12110, except that if the reinsurance agreement
21 is not pro rata the contribution to the contingency reserve shall be
22 equal to 50 percent of the quarterly earned insurance premium.

23 (C) Complies with the provisions of subdivision (b) of Section
24 12114, except that its maximum aggregate assumed total net
25 liability shall be one-half that permitted for a financial guaranty
26 insurance corporation. For the purpose of determining compliance
27 with this clause, the assuming reinsurer, unless at the time of
28 cession and thereafter it is rated in one of the two top generic rating
29 classifications by a securities rating agency acceptable to the
30 commissioner, shall be limited to using 10 percent of its capital
31 and surplus in making this calculation.

32 (D) Complies with the provisions of Section 12115.

33 (E) If the insurer is an affiliate, parent, or subsidiary of the
34 financial guaranty insurance corporation, the affiliate, parent, or
35 subsidiary shall not assume a percentage of the corporation's total
36 liability in excess of its percentage of equity interest in the
37 corporation.

38 (F) Assumes from the financial guaranty insurance corporation
39 and any affiliate, parent, or subsidiary that is a financial guaranty
40 insurance corporation or an insurer writing only financial guaranty

1 insurance as is or would be permitted by this article, and any other
2 kinds of insurance that a financial guaranty insurance corporation
3 may write in this state, together with all other reinsurers subject
4 to this paragraph, less than 50 percent of the total exposures insured
5 by the financial guaranty insurance corporation and such affiliates,
6 parent, or subsidiaries after deducting any reinsurance placed with
7 another financial guaranty insurance corporation that is not an
8 affiliate, parent, or subsidiary or an insurer writing only financial
9 guaranty insurance as is or would be permitted by this article that
10 is not an affiliate, parent, or subsidiary.

11 (4) A nonadmitted insurer transacting only financial guaranty
12 insurance as is or would be permitted by this article and that
13 otherwise complies with the provisions of subparagraphs (A), (E),
14 and (F) of paragraph (3), and otherwise complies with paragraph
15 (1) or (2), and in compliance with the requirements of subdivision
16 (b) *or* (c) of Section 922.4 or subdivision (a) of Section 922.5, as
17 applicable.

18 (5) A nonadmitted insurer not transacting only financial guaranty
19 insurance as is or would be permitted by this article and that
20 complies with the provisions of subparagraphs (A), (C), (E), and
21 (F) of paragraph (3) in an amount not exceeding the liabilities
22 carried by the ceding financial guaranty insurance corporation and
23 in compliance with the requirements of subdivision (b) ~~or~~, (c), *or*
24 (d) of Section 922.4 or subdivision (a) ~~or~~ (b) of Section 922.5,
25 as applicable.

26 (c) In determining whether the financial guaranty insurance
27 corporation meets the limitations imposed by Section 12115, in
28 addition to credit for other types of qualifying reinsurance, the
29 financial guaranty insurance corporation's aggregate risk may be
30 reduced to the extent of the limit for aggregate reinsurance but, in
31 no event, in an amount greater than the amount of the aggregate
32 risk that will become due during the unexpired term of the
33 reinsurance agreement in excess of the financial guaranty insurance
34 corporation's retention pursuant to the reinsurance agreement.

35 ~~SEC. 2. Section 922.6 of the Insurance Code is amended to~~
36 ~~read:~~

37 ~~922.6. Credit for reinsurance shall not be denied a foreign~~
38 ~~ceding insurer to the extent that credit is recognized by the ceding~~
39 ~~insurer's domestic state regulator, provided that the domestic state~~
40 ~~is accredited by the National Association of Insurance~~

1 ~~Commissioners (NAIC), or the domestic state regulator has~~
2 ~~financial solvency requirements substantially similar to the~~
3 ~~requirements necessary for NAIC accreditation.~~

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